

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-904709R
LICENSE NO. 442993
Issued to: EMIL GEORGE KELLEY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2042

EMIL GEORGE KELLEY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 30 October 1974, and Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, admonished Appellant upon finding him guilty of misconduct. The specifications found proved allege that while serving as a Chief Engineer on board the SS JOHN B. WATERMAN, while the vessel was at sea, under authority of the document and license above captioned, Appellant did: (1) on 10 February 1974, at about 0800, wrongfully disobey a lawful command of the Master in that he failed to report to the Master's office to be logged, (2) on 10 February 1974, at about 0735, use abusive language toward the Master, (3) on 10 February 1974, at about 1300, wrongfully disobey a lawful command of the master in that he failed to report to the master's office to be logged, (4) on 4 April 1974, wrongfully disobey a lawful command of the master in that he failed to have the engine watchstander's quarters soogeed, and (5) on 4 April 1974, use abusive language toward the master.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of three witnesses and certain documents.

In defense, Appellant offered in evidence his own testimony and that of six witnesses, the deposition testimony of two witnesses and certain documents.

At the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and five specifications had been proved. He then served a written order which admonished Appellant.

The entire decision and order was served on 30 October 1974. Appeal was timely filed on 14 November 1974.

FINDINGS OF FACT

Appellant was the Chief Engineer on board the SS John B. Waterman on a foreign voyage during which the vessel maintained a persistent and continuous list of one to two and one-half degrees for the earlier part of the voyage. Various efforts were made by the Appellant, as Chief Engineer, to remove the list, however, it persisted to the displeasure of the Master. Subsequently, the Master began giving the Appellant written instructions concerning various efforts to remove the list while the Appellant continued to undertake attempts within his own expertise. At no time did the Appellant refuse to take measures to remove the list on the vessel.

Due to the lack of communication between the Appellant and the Master there was an unawareness of the corrective actions being taken. Based upon the belief that the Appellant refused the Master's order to remove the list from the vessel, the Master confronted the Appellant on two separate occasions, during which he ordered the Appellant to be present in the Master's office. On neither occasion did Appellant appear as ordered. During the course of one of these confrontations the Appellant also used abusive language directed to the Master. On another occasion the Master approached the Appellant regarding his prior written instructions to have the unlicensed crew quarters soogeed. Appellant claimed he was unaware of the written instructions since they were on the reverse side of the sheet. Thereupon, the Master verbally ordered Appellant to have the quarters cleaned. Appellant said he was busy and would do it later. On this occasion Appellant again used abusive language directed toward the Master.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the Appellant's failures to obey several orders and his use of abusive language were not wrongful.

APPEARANCE: Kierr, Gainsburgh, Benjamin, Fallon and Lewis;
Geo. Meyer, Esq.

OPINION

I

Appellant does not contest the authority of the Master, but rather, whether his orders to Appellant to appear were lawful, so as to establish misconduct on the part of Appellant in refusing to obey.

Because of the Administrative Law Judge's finding that the specification with regard to Appellant's failure to remove the list from the vessel was not proved, it is urged that the Master's subsequent order to report to his office was based upon a wrongful accusation. I do not find fault with that finding of not proved. Nevertheless, I do not agree that the Master's subsequent order to

report to his office was unlawful. The order itself was lawful in that the Master was within his authority to order the Appellant to his office to be logged. The problem with the vessel's list only precipitated the order and regardless of the Appellant's belief that the list removal instructions were improper, the separate event of the Master's order to be present in his office for logging was not unlawful.

The lawfulness of a Master's order to appear in his office finds support in the Alps, 19 F. 139(D.C. N.Y. 1883). The District Court, citing the Merchant' Shipping Act of Great Britian and Revised Statutes, section 4597, held that the libelant should forfeit two days pay for failing to obey the lawful command of the Master to appear in his office to be logged.

II

The policy being the definition of the use of abusive language is grounded in the concept of insubordination. Whether insubordinate conduct has occurred in a situation is a matter of fact for the Administrative Law Judge to determine.

Appellant urges that the abusive language used on both occasions was not directed toward the Master. Appellant further contends that the language used was "customary words used between men in this profession." The Judge found there was substantial evidence that abusive language was directed toward the Master. Upon review of the case record, I must agree with that finding.

The Appellant admits to using certain language (Transcript, Volume II, p.145) which I would interpret as none other than abusive. Although Appellant claims this language was not directed toward the Master, the use of it, easily within his hearing while he is awaiting a response to his order, would lead the master to the belief it was directed toward him. The abusive language was a retort to the Master's statements.

Customary language between seamen is not necessarily proper language between an seaman and a Master. The language used on both occasions was abusive in that setting and constituted insubordination.

III

Appellant contends that he did not wrongfully fail to have the watchstander's quarters soogeed. Appellant claims that his failure to carry out the Master's written orders was an oversight of those instructions as written. However, the basis for the Judge's finding that this specification was proved was not based on Appellant's oversight. Rather, the Judge found that Appellant wrongfully failed to carry out the Master's oral order on that date. Appellant's response was that he was busy and would do it later. (Transcript, Vol. II, p. 147). Therefore, there was substantial evidence for the finding that the Appellant wrongfully failed to obey the Master's order to have the quarters soogeed.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana on 30 October 1974, is AFFIRMED.

O. W. SILER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 26th day of November 1975.

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